

## DEPARTMENT OF STATE REVENUE

04-20160410.LOF

**Letter of Findings Number: 04-20160410**  
**Sales Tax**  
**For Tax Years 2013-14**

**NOTICE:** IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective as of its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

**HOLDING**

Business was able to produce documentation and explanation showing that one sale was to an exempt customer. Therefore, that transaction was not subject to sales tax. Business was not able to produce sufficient documentation to establish that the remainder of the transactions at issue were not taxable Indiana transactions. Those transactions remain in the Department's calculations of sales tax due. Waiver of penalty was not warranted.

**ISSUES****I. Sales Tax—Imposition.**

**Authority:** IC § 6-2.5-2-1; IC § 6-2.5-8-8; IC § 6-8.1-5-1; Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Indiana Dept. of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); Sales Tax Information Bulletin 28S.

Taxpayer protests the imposition of sales tax on sales to some customers.

**II. Tax Administration—Negligence Penalty.**

**Authority:** IC § 6-8.1-10-2.1; [45 IAC 15-11-2](#).

Taxpayer protests the imposition of penalties.

**STATEMENT OF FACTS**

Taxpayer is a car dealership in Indiana. After an audit for the years 2013 and 2014, the Indiana Department of Revenue ("Department") determined that Taxpayer failed to collect sales tax on vehicles sold to some of its non-resident customers. The Department therefore issued proposed assessments for sales tax, penalty and interest. Taxpayer protested imposition of sales tax and interest. A hearing was held, and this Letter of Finding results. Additional facts will be supplied as required.

**I. Sales—Imposition.****DISCUSSION**

Taxpayer protests the imposition of sales tax on vehicles sold to non-resident customers in the tax years 2013 and 2014, which the Department determined were not exempt. The Department based its determination on Taxpayer's sales records, which showed sales where no sales tax was collected and no record of a valid exemption certificate was on file. Taxpayer provided copies of forms it created with customers' signatures stating that the vehicles they purchased were delivered out-of-state. The Department sent letters to some of those customers to verify the accuracy of the signed forms. While some of those customers replied that they did take delivery of their vehicle at an out-of-state location, some of the customers replied that they had taken delivery of their vehicles at the dealership, refuting the statements on the forms. The Department then calculated an error rate for the sales in those years, with the numerator being the total taxable amount of sales from customers who responded that they had received their vehicle at the dealership, and the denominator being the total taxable amount of sales from all of the customers who responded to the letters. This error rate was then applied to the

total sales Taxpayer claimed were from vehicles delivered out-of-state in 2013 and 2014. Taxpayer disagrees with the Department's conclusions.

As a threshold issue, it is the Taxpayer's responsibility to establish that the existing tax assessment is incorrect. As stated in IC § 6-8.1-5-1(c), "The notice of proposed assessment is prima facie evidence that the department's claim for the unpaid tax is valid. The burden of proving that the proposed assessment is wrong rests with the person against whom the proposed assessment is made." *Indiana Dept. of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dept. of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Consequently, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Further, "[W]hen [courts] examine a statute that an agency is 'charged with enforcing. . .[courts] defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party.'" *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014). Thus, all interpretations of Indiana tax law contained within this decision, as well as the preceding audit, shall be entitled to deference.

Sales tax is imposed by IC § 6-2.5-2-1, which states:

- (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.
  - (b) The person who acquires property in a retail transaction is liable for the tax on the transaction and, except as otherwise provided in this chapter, shall pay the tax to the retail merchant as a separate added amount to the consideration in the transaction. The retail merchant shall collect the tax as agent for the state.
- (Emphasis added).

Therefore, retail merchants are required to collect sales tax on retail transactions, unless the transaction is exempt from sales tax.

Taxpayer claims that the proposed assessments on its sales in Indiana were overstated. Taxpayer argues that the Department should not overlook the forms it supplied, signed by customers, stating that the delivery occurred outside Indiana. Taxpayer claims that the letters sent to its customers by the Department were confusing, which lead to inaccurate results. The Department sent letters to 243 of the Taxpayer's non-resident customers. Out of 110 responses received, 75 customers verified that they had picked up their vehicle at the dealership, making the vehicles subject to sales tax. The Department notes that the forms were usually signed on the same day as the sale of the vehicle.

Taxpayer states that it did keep records sufficient to establish the delivery site of the vehicles and that the Department's calculations of tax due on those sales are incorrect. Taxpayer points to instances where it was not selling to individuals, but rather was selling to other retail merchants. Taxpayer provided one exemption certificate to support this position. That one transaction will therefore be removed from the Department's calculations of sales tax due.

Regarding the remaining transactions at issue, Sales Tax Information Bulletin 28S 20120530 Ind. Reg. 045120259NRA provides that, "Terms and method of delivery must be indicated on the sales invoice. The dealer must document terms of delivery and must keep a copy of such terms of delivery to substantiate the interstate sale." Therefore, as provided by Sales Tax Information Bulletin 28S, to be exempt from collecting Indiana sales tax, Taxpayer must provide a sales invoice or purchase order which lists the delivery terms in order to prove that the vehicle was sold outside of Indiana. Taxpayer did not provide documentation that the terms and method of delivery were indicated on the sales invoice. Taxpayer relies only on its forms to support its position. After review, the Department concludes that this documentation is not sufficient by itself to establish the vehicles were delivered out-of-state pursuant to Sales Tax Information Bulletin 28S. Therefore, Taxpayer has not met the burden imposed by IC § 6-8.1-5-1(c) to prove the proposed assessment was incorrect.

In conclusion, pursuant to IC § 6-2.5-2-1(b), Taxpayer, as a retail merchant, was required to either collect sales tax on vehicles delivered in Indiana or to indicate delivery terms and locations on out-of-state deliveries on the sales invoices. Taxpayer did neither for the bulk of the sales in question. The forms supplied by Taxpayer do not meet the Department's requirements as listed in Sales Tax Information Bulletin 28S. Taxpayer has not met the burden imposed by IC § 6-8.1-5-1(c) for these sales. Regarding the sale for which Taxpayer has provided an exemption certificate, that transaction will be removed from the Department's calculations of sales tax due. The new error rate will then be applied to the total claimed out-of-state sales and a new amount of sales tax due will be calculated. Therefore, while this Letter of Findings represents the Department's decision on the protest, that decision will not be finalized until the Department recalculates the error rate and the revised amount of sales tax due, as described above.

## FINDING

Taxpayer's protest is denied.

### II. Tax Administration–Negligence Penalty

## DISCUSSION

The taxpayer protests the imposition of the ten percent negligence penalty pursuant to IC § 6-8.1-10-2.1. Indiana Regulation [45 IAC 15-11-2](#)(b) clarifies the standard for the imposition of the negligence penalty as follows:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

[45 IAC 15-11-2](#)(c) provides the standard for waiving the negligence penalty:

The department shall waive the negligence penalty imposed under [IC 6-8.1-10-1](#) if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

In this case, Taxpayer incurred a deficiency that the Department determined was due to negligence under [45 IAC 15-11-2](#)(b), and so was subject to a penalty under IC § 6-8.1-10-2.1. Taxpayer did not put the terms and method of delivery on the invoices, as required by the Department. Taxpayer has not affirmatively established that its failure to pay the deficiency was due to reasonable cause and not due to negligence, as required by [45 IAC 15-11-2](#)(c). Therefore, the ten-percent negligence penalty is appropriate.

## FINDING

Taxpayer's protest is respectfully denied.

## SUMMARY

Taxpayer's protest in Issue I regarding the proposed assessment of additional sales tax on the sale of vehicles to non-resident customers is sustained with regard to the one transaction for which an exemption certificate has been provided and denied in all other regards, as explained above. Taxpayer's protest in Issue II regarding the imposition of a ten-percent negligence penalty is denied.

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